

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

8:13-CR-43

vs.

JESSICA MARIE HERNANDEZ,

Defendant.

ORDER

This matter is before the Court on the defendant's "Motion for Case Records" (filing 714) and motion for leave to proceed in forma pauperis (filing 715). The Court finds that even if indigent, the defendant is not entitled to free case records. So, her motion for case records will be denied, and her motion to proceed in forma pauperis will be denied as moot.

The defendant asks the Court to prepare hearing transcripts and provide her with copies of those and certain other documents, because she "seeks to submit a claim that certain constitutional rights were violated." Filing 714 at 1. An indigent defendant bringing a postconviction proceeding under 28 U.S.C. § 2255 may have a transcript prepared at the government's expense, if the suit is not frivolous and the transcript is needed to decide the issue presented by the suit. 28 U.S.C. § 753. But any request for a free transcript prior to the filing of a § 2255 motion is premature. *Chapman v. United States*, 55 F.3d 390, 390-91 (8th Cir. 1995). And the defendant has not filed such a motion yet in this case.

More generally, the defendant does not have the right to receive copies of documents without payment, even if she has leave to proceed in forma pauperis. See, 28 U.S.C. § 1915; *Lewis v. Precision Optics, Inc.*, 612 F.2d 1074, 1075 (8th Cir. 1980). The Court will, therefore, deny the defendant's motion for transcripts and copies.

The defendant may, if she files a § 2255 motion, move for a transcript to be prepared pursuant to § 753, and the Court will at that time consider whether her motion is frivolous and the transcript is necessary. Alternatively, the defendant can pay for a transcript to be prepared and for the copies she has requested.

The Court will direct the Clerk's office to provide the defendant with a copy of a request for transcript form, which the defendant may complete and return. The defendant's sentencing hearing was recorded by a court reporter,

so if the defendant returns the request for transcript form, the court reporter will contact the defendant to arrange for payment of the fee. The defendant is advised that the *estimated* cost for transcribing the sentencing hearing, at the 30-day rate, is approximately \$80. (An expedited transcript would cost more.)

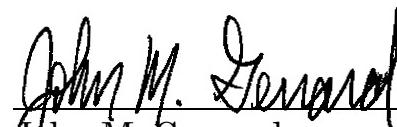
The defendant does not need to request preparation of a transcript of her change of plea hearing, because that transcript was already prepared for the Court's use. So, for the other documents the defendant has requested—the indictment, plea agreement, and transcript of her change of plea hearing—she would need to pay only for the copies at 50¢ per page. That cost would be \$20.50. (The indictment is 2 pages, the plea agreement is 8 pages, and the transcript of the change of plea hearing is 31 pages.)

IT IS ORDERED:

1. The defendant's "Motion for Case Records" (filing 714) is denied.
2. The defendant's motion for leave to proceed in forma pauperis (filing 715) is denied as moot.
3. The Clerk of the Court is directed to provide the defendant with a copy of this order and a copy of the Court's request for transcript form.

Dated this 14th day of August, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge